

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 24-cv-21929-BLOOM/Elfenbein

ZACHARY GRIFFIN,

Plaintiff,

v.

MOTORSPORT GAMES INC.,

Defendant.

PLAINTIFF'S STATEMENT OF MATERIAL FACTS

Pursuant to Fed. R. Civ. P. 56 and S.D. Fla. L.R. 56.1, Plaintiff Zachary Griffin ("Griffin"), by and through undersigned counsel, submits the following Statement of Material Facts as to which there is no genuine issue to be tried, in support of Plaintiff's Motion for Summary Judgment against Defendant Motorsport Games Inc. ("MSG"):

1. MSG is a racing videogames developer, publisher, and e-sports ecosystem provider of official motorsports racing series throughout the world. *See* Griffin Decl., ¶ 2, at **Exhibit 1**.

2. In March 2021, MSG acquired the rights to the game *KartKraft* from Black Delta, an Australian company where Griffin was a shareholder. Prior to the close of the acquisition, MSG set up a local entity called Motorsport Games Australia Pty Ltd ("MSG-Aus"). On March 16, 2021, Griffin was hired by MSG as Director of Studio of MSG-Aus. *See* **Ex. 1**, ¶ 3.

3. On August 9, 2021, Griffin traveled to Miami at the request of MSG's CEO, Dmitry Kozko ("Kozko"). *See* **Ex. 1**, ¶ 4, Ex. A.

4. On or about August 18, 2021, while in Miami, Kozko requested that Griffin relocate from Australia to Miami, Florida to work in MSG's Miami office. *See* **Ex. 1**, ¶ 5.

5. On September 8, 2021, Kozko and Griffin orally agreed to the terms of Griffin's relocation to MSG's Miami office (the "Relocation Agreement"). *See* **Ex. 1**, ¶ 6.

6. The terms of the Relocation Agreement included Griffin's promotion to Director of Technology; a base salary of \$240,000 per year; an annual bonus of \$70,000; and visa sponsorship for Griffin and his wife. *See* **Ex. 1**, ¶ 7.

7. On September 9, 2021, Amanda LeCheminant ("LeCheminant"), MSG's General Counsel, sent an email introducing Griffin to Mark Katsman ("Katsman"), the immigration lawyer recommended by MSG to handle Griffin's relocation to Miami. *See* **Ex. 1**, ¶ 8, Ex. B.

8. On October 6, 2021, MSG's Vice President of Studios, Jack Griffin, sent an email to several MSG executives to announce that Griffin "w[ould] become our MSGM Studios' Director of Technology." *See* **Ex. 1**, ¶ 9, Ex. C.

9. On January 5, 2022, Kozko forwarded Griffin a text conversation between Kozko and then MSG President, Stephen Hood, discussing Griffin's relocation to Miami, where Kozko stated he had "asked [Griffin] to come and . . . mov[e] here permanently." *See* **Ex. 1**, ¶ 10, Ex. D.

10. On January 6, 2022, Katsman provided Griffin with a checklist of the documents required for relocation to Miami. *See* **Ex. 1**, ¶ 11.

11. On February 7, 2022, Dara Malavolta ("Malavolta"), MSG's Director of Human Resources, sent an email to ADP, copying Griffin, informing ADP that "one of [MSG's] Directors, is moving to the US from Australia with his wife in March." *See* **Ex. 1**, ¶ 12.

12. On February 8, 2022, Malavolta sent an email to Griffin providing documents to explain the health coverage plans offered to US employees. *See* **Ex. 1**, ¶ 13, Ex. E; Beckley Depo, 51:13-52:18, at **Exhibit 2**.

13. On March 12, 2022, Kozko sent an email to MSG's Head of Communications, Anne Dongois, and MSG's Executive Producer, Andy Stack, introducing Griffin as MSG's new "Global Director of Technology," and stating that he was "on his way to relocate to Miami with his family." *See Ex. 1, ¶ 14, Ex. F.*

14. On or about April 6, 2022, Griffin and his wife traveled to Miami, with supporting documents for their relocation, as instructed by Katsman. *See Ex. 1, ¶ 15, Ex. G.*

15. On or around April 20, 2022, with Kozko's approval, Griffin applied for a 15-month lease on behalf of MSG for him and his wife with The Bozzuto Group. *See Ex. 1, ¶ 16, Ex. H.*

16. On or around April 27, 2022, The Bozzuto Group denied the lease application. *See Ex. 1, ¶ 17, Ex. I.*

17. On or around May 6, 2022, Griffin requested from Kozko and MSG a letter stating that Griffin would be "receiving a paycheck with [his] new move to Florida." *See Ex. 1, ¶ 18.*

18. On May 6, 2022, Kozko requested that Griffin agree to a reduction in his bonus to \$48,000, from the previously agreed \$70,000, based on MSG's financial position. *See Ex. 1, ¶ 19.*

19. As incentive to accept the reduced bonus, Kozko offered that the reduced bonus be split into two payments, with the first payable in June. *See Ex. 1, ¶ 20.*

20. On May 9, 2022, Malavolta, who works in MSG's United States operation out of the Miami office, sent Griffin a revised employment agreement, including the revision to the bonus and a cover letter to be submitted to HOA, which misrepresented the date of the relocation request as being May 6, 2022. *See Ex. 1, ¶ 21, Exs. J-K.*

21. On or around May 21, 2022, Griffin secured a 15-month lease with The Bozzuto Group, aided by the cover letter provided by Malavolta and Kozko serving as guarantor, providing paystubs in support of Griffin. *See Ex. 1, ¶ 22, Exs. L-M.*

22. On June 8, 2022, Katsman, LeCheminant, Malavolta,¹ and Griffin had a video call, where Katsman told Griffin that he did not know that the income years for tax purposes in Australia were different than in the United States. *See Ex. 1, ¶ 23.*

23. Katsman also told Griffin that his FY20/21 tax returns could not be submitted with the L-1 visa petition because it did not demonstrate 12 months of employment. *See Ex. 1, ¶ 24.*

24. Based on Katsman's statement, Griffin believed that he had no other choice than to wait to file the L-1 visa petition until he had his FY21/22 tax return. *See Ex. 1, ¶ 25.*

25. Katsman did not follow up or otherwise communicate with Griffin following this June 8 call. *See Ex. 1, ¶ 26.*

26. On or around October 12, 2022, Griffin informed Kozko of the losses Griffin had suffered because of MSG's failure to complete his transfer to Miami. *See Ex. 1, ¶ 27.*

27. On or about October 18, 2022, Griffin shared a spreadsheet with Kozko that detailed the losses Griffin had suffered. *See Ex. 1, ¶ 28, Ex. N.*

28. On or about October 19, 2022, Griffin met with a second immigration attorney, who confirmed that Katsman was mistaken as to the requirement of Griffin's FY21/22 tax return for his L-1 visa petition and offered an alternative pathway via the E-3 visa, which was not disclosed by Katsman. *See Ex. 1, ¶ 29.*

29. On October 21, 2022, Kozko and Griffin met to review the spreadsheet, and Kozko instructed Griffin to "submit the [losses] as expenses" so that MSG could cover them, through both reimbursement and a bonus due on release of one of the game updates. *See Ex. 1, ¶ 30.*

30. Kozko also told Griffin that MSG would pay for a new immigration firm to prepare visa applications for Griffin and his wife. *See Ex. 1, ¶ 31.*

¹ At some point between 2022 and 2023, Malavolta changed her last name to "Acker."

31. On November 3, 2022, Griffin was asked if he was aware of anything that would have a material effect on MSG's financial condition, cash flows, or results of operation that would be of importance to MSG shareholders. Griffin responded that it was highly likely that the release of the game *INDYCAR23* would be pushed to at least September 2023. *See Ex. 1, ¶ 32.*

32. Kozko reprimanded Griffin after being asked to meet with MSG's finance team due to Griffin's disclosure, stating: "You shouldn't say things like that to finance." *See Ex. 1, ¶ 33.*

33. On or about November 7, 2022, Kozko informed Griffin that the company did not have enough cash to last to the end of the year. *See Ex. 1, ¶ 34.*

34. On or around November 28, 2022, Griffin advised Kozko that because of salary delays and \$428,000 in unpaid invoices, development across most MSG products was blocked. *See Ex. 1, ¶ 35.*

35. On or around December 7, 2022, Griffin advised Kozko that the account for MSG in Australia had suspended all services due to unpaid invoices. *See Ex. 1, ¶ 36.*

36. On December 8, 2022, Griffin emailed Kozko to inform him that MSG was at risk of trading insolvent in Australia due to its mounting debts. *See Ex. 1, ¶ 37.*

37. On or around December 13, 2022, Kozko expressed to Griffin that the December 8, 2022, email had "caused some issues." *See Ex. 1, ¶ 38.*

38. On December 28, 2022, Griffin asked Kozko for a timeframe on when Griffin would receive the agreed-upon compensation for his losses. *See Ex. 1, ¶ 39.*

39. On January 11, 2023, Kozko reneged on his prior agreement for MSG to pay for Griffin's losses, stating "there's no way the company's going to have a half-million-dollar cost on you," referring to the estimated amount of Griffin's losses. *See Ex. 1, ¶ 40.*

40. On or around January 14, 2023, Kozko then sent an email to Griffin proposing three bonuses, totaling \$250,000, to settle Griffin's losses. *See Ex. 1, ¶ 41, Ex. O.*

41. On or around February 27, 2023, Griffin received an email from Malavolta offering an increase in Griffin's compensation, different from the offer made by Kozko on January 14, 2023. *See Ex. 1, ¶ 42, Ex. P.*

42. While Griffin made multiple attempts to finalize in good faith the conditions of the new proposed bonuses, negotiations stalled following Malavolta's email. *See Ex. 1, ¶ 43.*

Dated: March 19, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 19, 2025, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will serve a copy of it by Notice of Electronic Mail to all counsel of record.

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